IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 194 (M/B) of 2003

Tej Pal Singh S/o Sri Govind Singh,
R/o Lakshmi Narayan Mandir Marg, Pauri Garhwal
... Petitioner

Vs

The District Magistrate, Pauri Garhwal
... Respondents

Dated: July 19,2006

Sri L.P. Naithani, Senior Advocate, learned counsel for the petitioner
Sri K.P. Upadhyaya, ld. Standing counsel for the State.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari for quashing the order dated 12.3.2003 by which the lease deed of the petitioner has been cancelled.

The short controversy involved in the writ petition is that the lease granted to the petitioner under the U.P. Minor Minerals (Concession) Rules, 1963 ***(hereinafter will be referred to as the Rules)*** has been cancelled by the Collector without affording any opportunity under 60 of the Rules. The State of Uttaranchal has adopted the aforesaid Rules with certain modifications which is known as Uttaranchal Minor Minerals (Concession) Rules, 2001. So far as Rule 60 of the Rules is concerned, analogous provisions is contained in Uttaranchal 2001 Rules.

Learned counsel for the petitioner sought to challenge that under the Rules only the State Government was competent to cancel the lease but not the Collector, therefore the cancellation order of the lease has been passed by an authority who is not competent to pass any order. Secondly, it is contended by the learned counsel for the petitioner that no opportunity has been

provided by the State Government before the cancellation of the lease. The order of cancellation has been passed on certain inspections made behind the petitioner for which no notice was given to him. Rule 71 of the 1963 Rules provides that the State Government may, by notification in the *Gazette,* direct that any power exercisable by it under these rules, may in relation to such matters and subject to such conditions, if any, as may be specified in that notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

The lease deed is on record a perusal of which shows that the lease has been signed by the Collector on behalf of the State Government and the petitioner has also signed the same. The petitioner has carried on operation of mining of mines and minerals under the aforesaid Rules granted by the Collector. Despite the fact that the petitioner has carried on mining work in the aforesaid lease, it has been stated in para- 16 of the writ petition that the State Govt. had only power and the the Collector has no power to grant or cancel the lease. No reply has been given in the counter affidavit to this statement, however this statement is of no help to the petitioner as the petitioner cannot be allowed to blow hot and cold i.e. on one hand he has availed all the benefits under the lease granted by the Collector and on the other hand it is being stated by him that the Collector has no authority, therefore the statement made by the petitioner is not acceptable.

Learned counsel for the petitioner invited our attention on the clause-I of the agreement and submitted that the agreement has been executed on behalf of the Governor whose powers can be exercised by the State Government under Rule 60 of the Rules and for exercising powers on behalf of the Governor, there must

be a clear-cut delegation under Rule 71 of the Rules to grant the lease by the Collector.

In the notification dated 12.12.1963, it has specifically been provided that in exercise of its powers under Rule 71 of the Rules, the Governor of U.P. is pleased to direct that any powers exercisable by the State Government under a rule mentioned in column No.II of the Schedule below may be exercisable also by the officer specified against that entry in column No. III within his jurisdiction in relation to such matters and subject to such conditions, if any, as are specified in column IV thereof. At Sl. No. 11 of the schedule, Rule 60 is referred and the officers on whom powers are delegated are referred in Col. 3 i.e. District Officer. Therefore, by virtue of the said notification, the power to grant lease and cancel the lease is vested with the Collector. From the perusal of the agreement on record, it is evident that the lease has been duly signed and executed by the Collector, therefore, there is no illegality in the execution of the lease deed. Further, there is also no illegality in exercise of powers exercised by the Collector.

But manner of exercise of powers is not in accordance with the provisions of Rule 60 of the Rules. Rule 60 of the Rules specifically provides that the lease can be cancelled on contravention on some of the clauses of the lease after giving the reasonable opportunity to the lessee to state his case. Learned counsel for the petitioner submitted that since no reasonable opportunity was given to the petitioner, therefore, the order passed by the collector is in violation of the provisions of Rule 60 of the Rules. On the other hand, learned standing counsel for the State Sri K.P. Upadhyaya submitted that the show cause notice was given and the reply was submitted by the petitioner and

thereafter the cancellation order was passed therefore the reasonable opportunity was given to the petitioner.

Learned counsel for the petitioner submitted that the show cause notice given to the petitioner did not refer the inspection made behind him which was the basis to hold the contravention of condition of lease and the inspection report thereon was never supplied to him therefore non-supply of the said documents itself establishes that no reasonable opportunity was given to the petitioner.

In view of the above, it is clear that no reasonable opportunity was given to the petitioner before cancellation of the lease deed. Therefore, the order of cancellation of lease deed of the petitioner is contrary to the provisions contained in Rule 60 of the Rules and cannot be sustained in the eye of law.

Accordingly, the order dated 12.3.2003 passed by District Magistrate, Pauri Garhwal is hereby quashed. The writ petition is allowed. However, it is open for the respondents to pass appropriate order in accordance with law. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

19.07.2006
Rajeev Dang